

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6**

**UTILITY WORKERS UNITED ASSOCIATION,
LOCAL 537,**

and

Case 06-CB-235968

**PENNSYLVANIA AMERICAN WATER
COMPANY**

**RESPONSE OF UTILITY WORKERS
UNITED ASSOCIATION, LOCAL 537 TO AMENDED RULE TO
SHOW CAUSE WHY THE CHARGING PARTY'S MOTION FOR
PARTIAL SUMMARY JUDGMENT SHOULD NOT BE GRANTED¹**

AND NOW, comes the Charged Party, Utility Workers United Association, Local 537, through its attorneys, Sherrard, German & Kelly, P.C. and Samuel J. Pasquarelli, Esquire, and files the within Response To Rule To Show Cause why the Employer's Motion for Summary Judgment Should Not Be Granted, setting forth herein and in its Memorandum of Law in support of this response the following:

1. Paragraph 1 of the Employer's Motion for Partial Summary Judgment is admitted.
2. In response to Paragraph 2 of the Employer's Motion for Partial Summary Judgment, the Charged Party avers that prior to March 19, 2018, the predecessor to the Charged Party was Utility Workers Union of America, System Local 537 ("hereinafter System Local 537"), affiliated with the Utility Workers Union of America, AFL-CIO ("hereinafter the National Union"), and that on March 19, 2018, the members of System Local 537 validly disaffiliated from System Local 537 and properly voted to affiliate with the Charged Party. The Charged Party so notified the Employer but the Employer failed and refused to recognize the disaffiliation from System Local 537 and the affiliation with the Charged Party.

¹ This Response to Rule to Show Cause is a restatement of the Response to Rule to Show Cause filed by the Charged Party in response to the original Rule To Show Cause that was issued in this matter. When the Charged

3. The National Union attempted to place System Local 537 in trusteeship on March 19, 2018, and on March 28, 2018, it filed litigation in the United States District Court for the Western District of Pennsylvania at No. 2:18-cv-00398-DSC (“ the trusteeship case”) to attempt to enforce and validated the said trusteeship.

4. On April 19, 2018, a consent preliminary injunction was entered in the trusteeship case, forbidding the individual defendants therein, who were the officers of the Charged Party from “. . . representing themselves as the authorized officers or representatives of [System Local 537] or as the officers of [the Charged Party]. . . .” and requiring those defendants to “[c]ease and desist from interfering in any manner with the conduct of the trusteeship. . . .”. See Ex. 5 attached to the Employer’s Motion for Partial Summary Judgment.

5. The preliminary injunction was consented to by the Defendants in the trusteeship case because at the preliminary stages of the trusteeship case, said Defendants believed that the District Court would find that, as a preliminary matter, more harm would be done to the parties by refusing to grant the preliminary injunction than would be done by granting it.

6. The aforesaid preliminary injunction was entered before the Charged Party could take any action to compel the Employer to recognize the effects of the aforesaid disaffiliation.

7. On March 5, 2019, the National Union voluntarily withdrew the trusteeship case, prior to any trial or motions being filed therein.

8. Prior to the withdrawal of the trusteeship case, individual members of the Charged Party filed Petitions for Decertification of System Local 537 with Region 6 of the National Labor Relations Board. They did so because they were of the opinion that the only way to accomplish the result desired by the disaffiliation was to file said petitions, since the²

Party filed its original Memorandum of Law, it assumed that the question involved was as stated in the Amended Order of the Board.

² While the Charged Party has documentation to support the allegations of this paragraph, it is noted that Rule 102.24 states that affidavits or documentary evidence to support the response is not required.

preliminary injunction forbade the officers of the Charged Party from taking any action which would interfere with the trusteeship, and pressing the issue of disaffiliation would, at that time, interfere with the trusteeship.

9. Partial Summary Judgment should not be granted for the following reasons:
 - a. There are genuine issues of material fact relative to the validity of the aforesaid disaffiliation from System Local 537 and affiliation with the Charged Party;
 - b. There are genuine issues of material fact relative to the Employer's refusal to honor the aforesaid disaffiliation;
 - c. There are genuine issues of material fact relative to the question of whether the Charged Party is the successor to System Local 537, including inter alia, facts showing that the officers and members of System Local 537 and the officers and members of the Charged Party were the same people;
 - d. While the Employer and the General Counsel urge that the Charged Party is a "new union" and that the Charged Party seeks to relitigate a question of representation allegedly resolved by the aforesaid Petitions for Decertification, there are genuine issues of material fact relative to (1) whether the Charged Party is the lawful successor to System Local 537, (2) whether the officers and members of System Local 537 and of the Charged Party are the same individuals, and (3) whether the union involved in the decertification proceedings (the Charged Party) is a different entity than the union alleging the aforesaid disaffiliation (the Charged Party);
 - e. There are genuine issues of material fact relative to the involvement of the Employer in thwarting and/or refusing to recognize the aforesaid disaffiliation; an

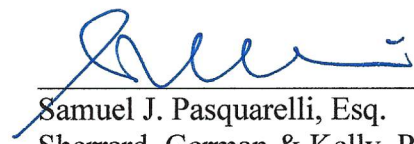
- f. There are genuine issues of material fact relative to the Employer's waiver of its position that the labor contracts referenced in its Motion for Partial Summary Judgment are not binding on it, and
- g. There are genuine issues of material fact relative to the Employer's accepting terms of the aforesaid labor contract that establish that the Employer has waived its claims that partial summary judgment should be granted to it.

10. In its investigation of the unfair labor practice charge filed by the Employer that resulted in the issuance of the complaint in this matter, Region Six failed to consider or accept relevant evidence concerning the disaffiliation from System Local 537 by the members thereof.

11. The answer and the defenses raised by the Charged Party in its response to the complaint in this matter all present genuine questions of material fact that can only be resolved by a trial on the merits.

WHEREFORE, the Charged Party/Respondent, Utility Workers United Association, Local 537, respectfully requests that the National Labor Relations Board deny the Employer's Motion for Partial Summary Judgment and order that this matter proceed to hearing before the Administrative Law Judge on the issues raised in the complaint and answer filed in this matter.

Signed this 30th day of December 2019 at Pittsburgh, Pennsylvania.



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AFFIDAVIT OF SERVICE

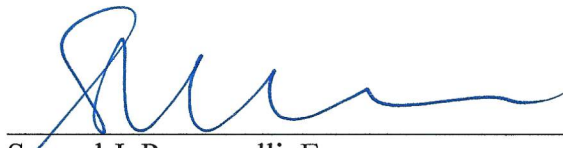
The undersigned hereby certifies that he did, on December 30, 2019, serve a true copy of the document to which this certificate is attached by United States mail, first class, postage prepaid, and by electronic mail addressed as follows:

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